

**Bell Federal Savings and Loan Association of Bellevue and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Soft Drink Workers, Beer Distributors and Allied Employees Local 250. Case 6-CA-7328**

October 15, 1974

**DECISION AND ORDER**

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On July 16, 1974, Administrative Law Judge Almira Abbot Stevenson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt her recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint herein be, and, it hereby is, dismissed in its entirety.

**DECISION**

**STATEMENT OF THE CASE**

ALMIRA ABBOT STEVENSON, Administrative Law Judge: This case was heard at Pittsburgh, Pennsylvania, on June 6, 1974. The charge was filed by the Union and a copy served on the Respondent on March 7, 1974. The complaint was issued on April 30, 1974.

The issue is whether the Respondent's suspension of Patricia Yock on March 1, 1974, for 1 week without pay was violative of Section 8(a)(3) or 8(a)(1) of the National Labor Relations Act, as amended. For the reasons set forth below, I conclude that it was not.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the Respondent and the General Counsel, I make the following:

**FINDINGS OF FACT<sup>1</sup> AND CONCLUSIONS OF LAW**

**I. JURISDICTION**

The Respondent is a savings and loan association with its principal office in Bellevue, Pennsylvania, operating under a Federal charter granted on June 8, 1941. During the 12-month period preceding the issuance of the complaint, the Respondent's gross volume of business was in excess of \$500,000, including at least \$50,000 in revenue derived from investments made outside Pennsylvania. The Respondent admits, and I conclude, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. LABOR ORGANIZATION**

The record shows that the Charging Party-Union is affiliated with Joint Council 40, chartered by the International Brotherhood of Teamsters. It admits employees to membership and exists for the purpose at least in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, and working conditions. It has contracts with numerous employers. I conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICE**

**A. Background**

The Respondent's main savings and loan office is in Bellevue, Pennsylvania, with branch offices at Wexford and McKnight Road. Its president, Albert H. Eckert, is located in the main office at Bellevue. Six or seven clerical employees and others are located on the second floor there. On the first floor, there are 12 or so employees, including tellers, head teller, accounting clerk, and the savings-service supervisor.

Patricia Yock, receptionist-switchboard operator, also is on the first floor. Her unenclosed desk is about 25 to 30 feet from the nearest teller's cage. Her duties, as reflected in her position description and her testimony, include directing customers to the appropriate official, employee, or department. She opens savings accounts and receives incoming mail. Outgoing mail is deposited by employees in a basket near her desk; envelopes containing outgoing checks are previously sealed, but other envelopes are sealed by Yock with the postage meter. Yock receives all incoming telephone calls and connects the caller with the employee or official wanted. When calls come in for President Eckert, Yock obtains the name of the caller and announces it to him, and he tells her whether he will take the call. What Yock says to customers and into the telephone in a conversational tone of voice cannot, I find, be distinctly

<sup>1</sup> The General Counsel's motion to correct transcript is granted in the absence of objection. Most of the facts hereinafter found are undisputed. Where accounts vary, I have credited the witnesses who appeared to have the more complete and precise recall of details, those who seemed to give the most strictly honest accounts, and those whose accounts accord most closely with the probabilities in light of the record as a whole.

heard by others in the lobby. In all instances where incoming telephone calls are not completed, Yock takes messages on pink slips and stacks them on her desk where they are picked up by the employee called or by another for delivery. Yock's savings account, postage meter, and mail delivery duties require her to leave her desk for brief periods at a time; she is also away from her desk during the lunch hour and breaks. While she is absent, other employees answer the telephone, including the accounting clerk, Eckert's secretary, and the head teller. Those employees also have access to a list of frequently called business numbers which Yock keeps on her desk. Yock was given 1 day's on-the-job training by the previous receptionist in the techniques of operating the switchboard and in her other duties, and she received a copy of her position description the first week. Neither indicated that any of her work was confidential, and Yock received no other instructions regarding her duties and responsibilities.

In December 1973, the Union filed a petition with the National Labor Relations Board in Case 6-RC-6708 to represent a unit of the Respondent's clerical employees, and President Eckert contacted Henry Ingram, a partner in the law firm of Rose, Schmidt and Dixon, to represent the Company in matters related to the petition. Ingram, who had represented the Respondent in other labor relations matters in the past, obtained Eckert's agreement that another partner, Peter S. Wellington, be the firm's principal contact with Eckert in connection with the election proceeding. At a meeting between the Union and the Respondent on January 8, 1974, a consent-election agreement was worked out. Ingram signed the agreement for the Company, and attorney Louis Kushner signed for the Union.

The election was held on February 8, 1974. The votes were counted at the Wexford branch office, at which time Wellington introduced himself for the first time to the secretary-treasurer of the Union, Samuel Montani. Montani had dealt with another partner in the Rose, Schmidt and Dixon firm, Anthony Polito, over a period of years as the representative of another company, and a good working relationship had developed between them. However, Polito was never involved in the representation of the Respondent.

As soon as the votes were counted, Montani dropped over to the Bellevue branch office "and let the people on the first level there, the few that I could see know that we had won the election."

On February 11, 1974, Yock (who had signed a union authorization card and, along with approximately 11 other employees, had attended two or three union meetings before the election) received a letter from President Eckert reprimanding her for overstaying the lunch period with a group of other employees on December 17, 1973, and January 31, 1974, and warning her of discipline for further abuse of the lunch period. Wellington explained that Eckert had informed him of his displeasure that four or five employees, including some of the supervisors, had been late returning from lunch on December 17, 1973, but Wellington advised him to let it go as it was a first offense. Subsequently, on the day before the election, Eckert said the same employees had overstayed the lunch period again on January 31. Upon Wellington's advice, Eckert post-

poned taking any disciplinary action because of the approaching election, but stated his intent to do something after the election "whether we lose or not." Three days later, Eckert sent similar letters to the employees and supervisors involved, including Yock.

### *B. Immediate Events Leading to Yock's Suspension*

On either February 21 or 28, after the Union was certified, Secretary-Treasurer Montani telephoned attorney Polito to arrange a meeting with the Respondent's representative to commence negotiations for a contract. Polito informed Montani he was not representing Bell, that Wellington was; and that he would contact Wellington and get in touch with Montani. Wellington thereafter told Polito that Bell was looking for a non-lawyer to handle its negotiating; and that as it did not look like the firm would be handling the negotiations, it would not be appropriate to discuss a meeting with Montani. Polito conveyed this information to Montani.

On the evening of February 28, Montani held a meeting with 12 unit employees to formulate demands and elect a negotiating committee and a steward. After this business was completed (during which Yock was selected as a member of the negotiating committee), Montani expressed his eagerness to get negotiations under way and his uncertainty as to who would represent the Company. He then asked whether the name Wellington meant anything to the employees, and Yock volunteered that Wellington had called President Eckert four or five times on the telephone that day. This intelligence upset Montani because he felt Polito had misled him. The next day, March 1, Montani called Polito and told Polito he knew about Wellington's four or five telephone calls to Eckert the day before and also knew that the bank had mailed the law firm a check for a substantial fee.<sup>2</sup> Montani said this conduct was inconsistent with Polito's previous assurances that the law firm would not be handling the negotiations, and accused Polito of misrepresentation. Angered at being so accused, Polito confronted Wellington with Montani's statements. Wellington explained that the check had covered services performed in connection with the election proceeding; that Bell had now retained a non-lawyer to conduct its negotiations with the Union; and that Bell had retained Wellington only as legal counsel on labor matters. As Eckert had no previous experience dealing with unions, he was frequently in telephone communication with Wellington on such matters, Wellington said.<sup>3</sup> Montani did not contact either Wellington or Eckert in connection with this matter.

The same afternoon, Wellington told President Eckert there had been a serious breach of confidentiality at Bell as the number of times they communicated was becoming known to the Union. Eckert's reaction was to take immediate steps to cut off the flow of information about the affairs

<sup>2</sup> As indicated below, the record does not reveal the source of Montani's information about this check.

<sup>3</sup> The reason for the rash of telephone calls on February 28 was that Eckert received information that some unit employees had not been invited to attend the meeting with Montani scheduled for that evening, considered this unfair, and discussed with Wellington whether anything could be done about it.

of Bell and the law firm. Upon investigation, Eckert concluded that three employees could have told about the check. As Eckert could not determine which of the three employees was responsible, Wellington advised him not to discipline any of the employees for revealing information about the check. However, Eckert's investigation revealed that it was Yock who was responsible for telling about his telephone calls from Wellington, and Wellington himself confirmed it. Eckert's initial inclination was to discharge Yock. However, he took Wellington's advice that he merely discipline Yock by suspending her for a week without pay because her past work record was satisfactory and to avoid a possibly negative effect on the negotiations which were coming up. Eckert then discussed the matter with Yock's supervisor; had a letter prepared to that effect; and discussed the check matter with the two other employees suspected of the check information disclosure<sup>4</sup> in the presence of their supervisors. Thereafter, Eckert sent for Yock and in the presence of her supervisor presented her with the letter, which gave the following reason for the suspension.

... you have breached the confidentiality of your position as receptionist and telephone operator.

... you reported to a particular individual the number of times that a professional adviser called me yesterday afternoon. This is a very serious situation, and I will not tolerate it in the future.

Yock admitted the disclosure, and commented only, "I was specifically asked a question."

Six or seven bargaining sessions were held thereafter. Wellington attended only one and that because he was advised that the union lawyer would be there. Wellington also met separately with his union counterpart on one occasion to clarify language agreed to at the sessions. At the time of the hearing in this case, employees of the Respondent were on strike.

### C. Conclusions

The General Counsel contends that Yock was engaged in protected concerted activity when she revealed at a union meeting that President Eckert had received four or five telephone calls from attorney Wellington that day, and therefore the Respondent violated Section 8(a)(1) and (3) of the Act when it disciplined her for it. Alternatively, he contends that President Eckert seized upon Yock's disclosure as a pretext to conceal its real motive which was to discipline a known union adherent for the purpose of discouraging activities on behalf of the Union in violation of Section 8(a)(3) and (1). The Respondent contends that the conduct for which Yock was suspended was not protected

by the Act, and denies that the suspension was discriminatorily motivated or discouraged union activities.

I agree with the Respondent on both issues.

Implicit in the General Counsel's alternate theory, which shall be dealt with first, is the fact that Yock did indeed engage in the conduct ascribed as the reason for her suspension, and that she admitted as much to President Eckert. In determining Eckert's motive for the disciplinary measure, it is of overriding importance that the Respondent has not committed any other unfair labor practices and that there is no direct evidence that it was opposed to the unionization of its employees. Moreover, careful consideration of the bases advanced by the General Counsel for inferring discriminatory motive reveals them to be without merit.

(1) There is no reason to believe that the Respondent insisted the election be conducted in a unit of all three branch locations, instead of in a unit of only one branch as the Union petitioned for, because it wished to disadvantage the Union. And, as the General Counsel appears to concede, the actual result was that the Union won an election in a unit larger than it originally requested—a distinct advantage.

(2) There is no contention, and no evidence, that Yock and other employees who received the February 11 letters of reprimand for overstaying lunch periods had not in fact done so. Moreover, Wellington's explanation of the timing of the letters was reasonable and has been credited above. In these circumstances, and in view of the absence of any indication that employees had overstayed the lunch period in the past, the Respondent was not required, in order to avoid the inference that the February 11 letters were a reprisal against employees for voting the Union in, to come forward with evidence that letters like this had previously been issued. Nor does the record support the statement in the General Counsel's brief that after all the Respondent is a bank and "The banking industry has, to date, generally not been subject to organizational activities by labor organizations"; I am not prepared to take any kind of notice of that proposition; and even if I did, I could not infer therefrom that the Respondent resented the employees' selection of the Union as their bargaining representative.

(3) It is not clear what significance the General Counsel places on Eckert's admitted opinion that it was unfair that some of the unit employees were not invited to the February 28 meeting with Montani and inquired of his labor counsel whether there was anything he could do about it. I can attach no significance to it relative to assessing the Respondent's motive in suspending Yock.

(4) I find that there is no probative credible evidence or basis in all the circumstances for inferring that the Respondent was aware of Yock's union advocacy prior to discovering the conduct for which it suspended her. She did not stand out, nor was she singled out, as a leading advocate until her election to the negotiating committee at the February 28 meeting; and the Respondent did not find out about that until later, as far as we know.

(5) It is true that the Respondent had no published rule against the kind of disclosure involved here, and that neither Yock nor any other employee as far as the record shows was told before this incident that information re-

<sup>4</sup> Yock, and the other two suspected employees, Bredl, who typed the check and DeLisio, who ran it through the checkwriter, all denied revealing information about the check. DeLisio and Bredl testified that many employees have access to information about checks sent out by the bank. As found above, envelopes containing checks normally are sealed before they are placed in the outgoing mail basket by Yock's desk.

garding Eckert's telephone calls was not to be disclosed. Absence of a prior rule is a substantial factor, when considered in a context of other indicia of discriminatory motivation, in finding pretext. However, it is not enough standing alone and without such other indicia to justify such a finding, particularly where, as here, the Respondent apparently does not operate on the basis of published rules, but relies instead on a practice of admonishing employees after they have behaved in a manner considered unacceptable.

Accordingly, on the basis of the record as a whole, and particularly in the absence of other unfair labor practices or evidence that the Respondent was opposed to the unionization of its employees, and the candid testimony of Eckert and Wellington, which I have credited, regarding the circumstances surrounding the decision to discipline Yock and the implementation of that decision, I find that Eckert did so for the reason given by them, and did not seize on the incident of the telephone calls as a pretext to discipline a known union adherent for the purpose of discouraging employee activity on behalf of the Union.<sup>5</sup>

The remaining issue is whether, as the Respondent contends, President Eckert's telephone conversations with his legal counsel were confidential information the disclosure of which he had the right to control; or whether, as the General Counsel contends, the information was not confidential and Yock had the right under the Act to disclose it to her Union for its use in facilitating the establishment of good-faith bargaining.

I do not agree with the Respondent's contention that Yock's conduct touched upon any special obligation she had as a bank-type employee not to reveal information about the financial affairs of the Company's depositors.<sup>6</sup> On the other hand, it seems plain that President Eckert had a right to rely on Yock, or any other employee covering the switchboard, not to disclose information about his telephone calls, particularly those from his legal counsel.<sup>7</sup> Eckert was therefore entitled to consider such conduct a

breach of trust justifying discipline. Contrary to the General Counsel's contention, I find that Yock's conduct cannot be equated with that of employees who use information obtained at work such as the names and addresses of other employees, openly available from timecards, for organizational purposes.<sup>8</sup> Here, the Union had been certified as the bargaining agent. The Respondent had a duty, inherent in its obligation to bargain, upon request, to provide the Union with information as to the identity of its bargaining representative when that information became available.<sup>9</sup> Moreover, it undoubtedly would have done so if the Union had made such a request of either President Eckert or Wellington, who Polito had informed Montani was the Respondent's legal counsel. The result of Montani's opting for a roundabout rather than the direct approach was not the facilitation of the establishment of a good-faith bargaining relationship between the Union and the Employer, but the creation of mischief which tended to impede the establishment of such a relationship. I find that Yock's imprudent cooperation with Montani's inauspicious tangential approach to bargaining was not protected by the Act.<sup>10</sup>

I conclude that the Respondent did not violate Section 8(a)(1) or (3) of the Act by disciplining Yock for this conduct. I shall therefore recommend that the complaint be dismissed.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER <sup>11</sup>

The complaint is dismissed in its entirety.

<sup>8</sup> Cf. *Anserphone of Michigan, Inc., et al.*, *supra*; *Ridgley Manufacturing Company*, 207 NLRB 193 (1973); *Steele Apparel Company, Inc.*, 172 NLRB 903, 912-913 (1968), *enfd.* 437 F.2d 933 (C.A. 8, 1971).

<sup>9</sup> See *Texaco, Inc.*, 170 NLRB 142, 146 (1968); *The Fafnir Bearing Company*, 146 NLRB 1582, 1585 (1964), *enfd.* 362 F.2d 716 (C.A. 2, 1968).

<sup>10</sup> Accord: *Montgomery Ward & Co., Incorporated*, 146 NLRB 76, 78-79 (1964); *American Book-Stratford Press, Inc.*, 80 NLRB 914, 917, 936 (1948). *Texan-News, Inc.*, *supra*, and *Cello-Foil Products, Inc.*, 171 NLRB 1189 (1968), cited by the General Counsel, deal with altogether different factual situations.

<sup>11</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>5</sup> *Anserphone of Michigan, Inc., et al.*, 184 NLRB 305 (1970); *Murray-Ohio Mfg. Co.*, 148 NLRB 1541 (1964), *enfd.* 358 F.2d 948 (C.A. 6, 1966), and *St. Louis Car Company*, 108 NLRB 1523, 1525 (1954), in which the avowed reasons for disciplinary action were found to be pretextual must be distinguished on this ground.

<sup>6</sup> Accord: *News-Texan, Inc.*, 174 NLRB 1035 (1969), *enfd.* 422 F.2d 381 (C.A. 5, 1970).

<sup>7</sup> This is not to say that Yock, as a receptionist-switchboard operator, was or was not a confidential employee for purposes of unit placement or coverage of the Act. See *St. Louis Car Company*, *supra*.